IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1290 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOKBHAI B,LALWANI,PROPRIETOROF GENERAL TRANSPORT COMPANY: - Appellant(s)

Versus

PRAVINBA D/O VATUBHA BHURUBHA RATHOD & 2 - Defendant(s)

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Appearance :
None for Appellant(s) : None for Petitioner No(s).: for Appellant(s) : 1,MR PV NANAVATI : MR VP NANAVATI for Appellant(s) : 1.2.1
MR VIVEK SEVAK for MR SANDEEP N BHATT for Defendant(s) : 1,
SERVED BY AFFIX.(N) for Defendant(s) : 2,
None for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 05/02/2007

ORAL JUDGMENT

1. The appellant is original opponent no. 3 of Motor Accident Claim Case No. 269 of 1992 of MACT

[Special], Rajkot. The appellant has challenged in this appeal the judgment and award made by the aforesaid Tribunal dated 29th January, 1992, whereby it has awarded Rs.42,600=00 to respondent no. 1 for the injuries suffered by her in a vehicular accident which took place on 10th December, 1981 around 9:45 a.m. On that day respondent no. 2 drove his vehicle, namely truck bearing registration no. GTG 2159 in a rash and negligent manner and he knocked down respondent no. 1 causing serious injuries. She was removed to the Government hospital at Rajkot. She remained for a considerable period as indoor patient. She had sustained fractures in skull bone and also the leg. Her father, therefore, filed the claim petition in his capacity of guardian of the minor. On the basis of the material produced before it, the Tribunal passed the aforesaid award. The Tribunal also held respondent no. 2 guilty of negligence. It also held that the appellant was the owner of the vehicle at the relevant time and it was liable to satisfy the award. It may be noted here that on the date of the accident, the vehicle was not covered with third party insurance. Hence, this appeal.

2. Mr. V.P. Nanavati learned advocate for the appellant has submitted that under the hire purchase

agreement respondent no. 2 had purchased the truck and at the time of the accident, he was the owner of the vehicle and he was also in possession of it. He has submitted that the Tribunal has committed error in holding that the appellant was the owner. He has further submitted that the Tribunal after framing issue with regard to appellant's liability has given a finding that the appellant was liable to satisfy the award. Lastly he has submitted that the appellant deserves exoneration. Mr. Vivek Sevak learned advocate appearing for Mr. Sandeep Bhatt learned advocate for respondent no. 1 has supported the judgment and has submitted that since the appellant was in possession of the vehicle, he was the owner of it. He has further submitted that since respondent no. 3 did not pay the due installments, the appellant had taken away the possession of the truck and he had become the owner of it. Lastly he has submitted that the Tribunal be directed to pay the amount deposited by the appellant.

3. I have given careful consideration to the submissions of the learned advocates. I have also perused the record and proceedings of the case. It is very unfortunate that on the date of the occurrence of the accident, the vehicle did not have the third party insurance. The controversy whether the appellant was the

owner or respondent no. 3 was the owner on the date of the accident is required to be decided by this Court. According to the deposition of respondent no. 3 since he committed default in making the payment of installments, the appellant had taken away the vehicle from him and on the date of the occurrence of the event, he was not in possession and not the owner of the vehicle. The evidence of this witness cannot be given any importance because he never made himself available to the cross-examination. The record shows that on completion of the examination-in-chief, the hearing of the matter was again adjourned third time to enable respondent no. 3 to appear and give evidence. However, he has not remained present and his evidence has remained incomplete. In view of the same, the Tribunal could not have relied upon the deposition of respondent no. 3. It ought to have looked for other circumstances to find out whether the appellant was the owner or respondent no. 3 on the date of the accident. From the fact that respondent no. 2 who happened to be the driver of respondent no. 3, drove the vehicle shows that it was in possession of respondent no. 3. The driver gave a police statement wherein he has specifically stated that he was serving with respondent no. 3 and was drawing salary of Rs.350=00. This very clearly shows that the control and ownership of the vehicle remained with

respondent no. 3. The Tribunal, therefore, committed an error in holding that it was the appellant who was the owner of the vehicle.

4. The Tribunal has even not framed any issue to determine the liability of the appellant to satisfy the award. It has framed issue no. 3 as under :

"Whether opponent no. 3 is vicariously liable."

4.1. When this is the issue framed by the Tribunal, it appears that the Tribunal at this stage did not consider the appellant the owner of the vehicle. This finding of the Tribunal is, therefore, required to be quashed and set aside. However, considering the peculiar facts of this case and also the fact that the amount has already been deposited by the appellant before the Tribunal together with costs and interest, the Tribunal to pay respondent no. 1 the amount of interest and costs deposited by the appellant together with interest accrued on the deposit till this date. The principal sum of compensation i.e. Rs.42,600=00 be refunded to the appellant. It is made clear that so far as the interest and costs are concerned, it will be open for the appellant to recover it from respondent no. 3. Respondent

no. 1 also will be entitled to recover the amount of compensation from respondent no. 3. The amount to be disbursed within a period of six months from the date of this judgment.

5. With the aforesaid, the appeal is allowed with no order as to costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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